3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 231010-0243]

RIN 0648-BL34

Pacific Island Fisheries; Modification of Seabird Interaction Mitigation Measures in the Hawaii Deep-set Longline Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to modify seabird interaction mitigation measures to require federally permitted Hawaii deep-set longline vessels that set fishing gear from the stern to use a tori line (bird scaring streamer) in place of the currently required thawed, blue-dyed bait and strategic offal (fish, fish parts, or spent bait) discharge when fishing above 23° N latitude. This action is expected to improve the overall efficacy and operational practicality of required seabird mitigation measures by reducing seabird bycatch and creating operational and administrative efficiency for fishermen and NMFS.

DATES: NMFS must receive comments by [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA-NMFS-2022-0131, by either of the following methods:

- *Electronic Submission*: Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA-NMFS-2022-0131 in the Search box, click the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail*: Send written comments to Sarah Malloy, Acting Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The Western Pacific Fishery Management Council and NMFS prepared a draft environmental assessment and regulatory impact review that supports this proposed rule.

The draft environmental assessment is available at *www.regulations.gov*, or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808–522–8220, or *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Lynn Rassel, PIRO Sustainable Fisheries, 808-725-5036.

SUPPLEMENTARY INFORMATION: NMFS and the Western Pacific Fishery Management Council (Council) manage the Hawaii deep-set longline fishery under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). The implementing Federal regulations for this fishery include a suite of conservation and management requirements. Since 1994, the NMFS Pacific Islands Regional Office Observer Program has monitored seabird interactions in the Hawaii longline fisheries. In response to large numbers of seabird interactions, NMFS implemented a suite of seabird mitigation requirements in 2001. The current seabird requirements, including the use of thawed, blue-dyed bait and strategic offal discharge, began in 2002 (67 FR 34408, May 14, 2002) and were revised in 2005 (70 FR 75075, December 19, 2005). These requirements resulted in the reduction of seabird interactions by 70–90 percent. However, seabird interactions in the Hawaii longline fisheries gradually increased in the subsequent years, with significant increases in black-footed albatross interactions in the deep-set fishery since 2015.

In 2017, the Council held a workshop to explore the cause of the increasing interactions with black-footed albatross. The workshop suggested that a positive (warm) Pacific Decadal Oscillation, with its cooler sea surface in the western Pacific and stronger westerly winds, may increase the overlap of fishing effort and black-footed albatross foraging grounds, leading to more seabird interactions in the fishery. In 2018, the Council held a follow-up workshop to review seabird mitigation requirements and identify research needed to inform potential future requirements to reduce interactions with seabirds. That workshop identified certain mitigation measures, including tori lines, as a high priority for further research and development due to their potential to provide an effective alternative to blue-dyed bait.

Resulting cooperative research by the Council, the Hawaii Longline Association (HLA), NMFS Pacific Islands Fisheries Science Center (PIFSC), and NMFS Pacific Islands Regional Office in 2019-2021 demonstrated that when tori lines are employed in lieu of blue-dyed bait and strategic offal discharge on deep-set longline vessels that set from the stern, albatross attempts are 1.5 times less likely, contacts are 4 times less likely, and captures are 14 times less likely. Furthermore, there is inconclusive evidence that the existing strategic offal discharge requirements reduce seabird interaction risk, and the requirement is

associated with heavy administrative burdens to the Pacific Islands Region Observer Program and NOAA Office of Law Enforcement. Similarly, use of blue-dyed bait is burdensome due to the amount of time required to thaw and dye the bait, thawed bait loss from hooks, vessel maintenance costs related to using vats of blue dye, and the administrative burden to monitor and enforce consistent application of blue dye. We note that this proposed action would only modify seabird mitigation requirements for the Hawaii deep-set fishery; however, research on mitigation measures is currently underway in the Hawaii shallow-set fishery.

At its 189th meeting in December 2021, the Council recommended replacing thawed, blue-dyed bait and strategic offal discharge requirements for stern-setting deep-set longline vessels with a new requirement to use a tori line that meets certain design and material specifications. In lieu of a regulatory requirement to strategically discharge offal, the Council recommended implementing best practices training on offal management as part of the required annual protected species workshop.

Pursuant to the Council's recommendations, NMFS proposes to require deep-set longline vessels that stern-set to employ a tori line system instead of using thawed, blue-dyed bait and strategic offal discharge when fishing north of 23° N latitude. These measures would modify the requirements implemented at 50 CFR 665.815. NMFS also

proposes to require that vessels deploy a tori line system that meets required material, length, and position specifications prior to the first hook being set.

All Hawaii longline vessels would continue to be required to follow other existing seabird handling and release requirements at 50 CFR 665.815(b) and (c) to maximize the chances of post-release survival of seabirds that are caught alive, and to be certified for the completion of an annual protected species workshop conducted by NMFS (50 CFR 665.814). All other measures applicable to longline fisheries under the FEP would remain unchanged. This proposed rule and any related tori line design guidelines would also be consistent with seabird mitigation requirements set forth by the Western and Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission (IATTC) (see, *https://www.iattc.org/PDFFiles/Resolutions/IATTC/_English/C-11-02-Active_Seabirds.pdf and www.wcpfc.int/doc/wcpfc15-2018-dp16/seabird-interaction-mitigation-amendment-cmm-2017-06*).

The proposed rule would also make housekeeping changes at 50 CFR 665.802 to clarify prohibitions for vessels with Hawaii longline limited access permits. Specifically, the proposed rule would improve descriptions of which vessels the prohibitions apply to. The proposed rule would also correct the omission of a prohibition for side-setting

(setting the mainline from the port or starboard side of the vessel at least one meter from the stern) without a bird curtain and weighted branch lines.

NMFS will consider public comments on this proposed rule and will announce the final rule in the **Federal Register**. NMFS must receive comments on this proposed action by the date provided in the **DATES** heading. NMFS may not consider comments postmarked or otherwise transmitted after that date. Regardless of the final rule, all other existing management measures would continue to apply in the longline fisheries.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule would modify seabird interaction mitigation measures to require Hawaii deep-set longline fishing vessels that set fishing gear from the stern to use a tori line (bird scaring streamer) with associated tori line design and material specifications in place of the current thawed, blue-dyed bait and strategic offal (fish, fish parts, or spent bait) discharge requirements when fishing north of 23° N latitude. In lieu of the existing strategic offal discharge requirement, best practices on offal management would become part of the already required annual protected species workshop conducted by NMFS for longline vessel owners and operators. In this workshop, vessel owners and operators receive training on interaction mitigation techniques for sea turtles, seabirds, marine mammals, and other protected species. Such best practices for offal management include, among others, discharging offal from the opposite side of the vessel from where gear is being hauled while seabirds are actively pursuing the baited hooks. This action, together with best practices training, is expected to improve the overall efficacy and operational practicality of required seabird mitigation measures while reducing seabird bycatch.

Under the proposed action, fishery participants who currently use blue-dyed bait while stern-setting when fishing north of 23° N latitude would be required to either use tori lines or switch to side-setting. Many deep-set

longline fishery participants perceive meeting the current blue-dyed bait requirement as burdensome and have expressed interest in using tori lines instead. A small portion of participants may initially favor blue-dyed bait over tori lines due to its familiarity and perceived uncertainty associated with a new measure. Hawaii longline vessel design does not allow a vessel to easily convert between stern-setting and side-setting without considerable and costly modifications. Vessels that side-set fishing gear make up a small proportion of the Hawaii longline fisheries and are already required by regulations at 50 CFR 665.815(a)(1)(vii) to, among other mitigation measures, deploy a bird curtain with streamers that operate similarly to a tori line used in stern-setting. For all of these reasons, NMFS expects that most of the stern-setting vessels will switch to tori lines if they have not already, rather than continuing to use blue-dyed bait or convert to side-setting.

Each tori line is expected to cost roughly $350 (inclusive of materials and labor), and a tori pole constructed of marine-grade stainless steel is expected to cost approximately $375 (inclusive of materials and labor). Tori lines meeting the required design specifications are not currently sold commercially but can be assembled by vessel operators and crew using materials available for purchase from local retailers or online. Although NMFS

expects that tori lines may need to be replaced once every few years, the tori pole would likely last longer, given its construction using marine grade stainless steel and the use of a break-away point for the tori line that should also protect the pole from breaking. Deep-set longline vessels would be required to have two tori lines onboard at the start of every trip, so the initial cost per vessel would be $1,075 (one tori pole and two tori lines), with a recurring cost of $375 to replace a tori line once every few years. Using 2021 cost and revenue information, the initial cost of outfitting a deep-set longline vessel with tori lines represents approximately 0.1 percent of the annual revenue, and approximately 3.5 percent of gear cost. However, compliance costs associated with tori line requirements would be partially offset by the removal of the blue-dyed bait requirement at an estimated $334 per year per vessel.

Removing the offal discharge requirement would alleviate fishery participants' burden of retaining offal from the haul to discharge during the set. The recommended best practice of discharging offal from the opposite side of the vessel from where gear is being hauled while seabirds are actively pursuing the baited hooks, rather than when they are simply present, removes fishery participants' burden of strategically discharging at unnecessary times. These best practices are closely in line

with current fishing operations, as well as how they would occur in the absence of the current discharge requirement.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial finfish fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation, and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The proposed action would apply to the Hawaii deep-set longline fishermen who stern-set when fishing north of 23° N latitude. Based on available information and using individual vessels as proxies for individual businesses, NMFS has determined that all affected entities are small entities (*i.e.*, they are engaged in the business of fish harvesting, are independently-owned or operated, and are not dominant in their field of operation). In 2021, active deep-set longline vessels averaged $743,151 in revenue and gross receipts did not exceed $11 million. There would be no disproportionate economic impacts between large and small entities. Furthermore, there would be no disproportionate economic impacts on the relevant vessels based on gear, home port, or vessel length. The Hawaii-based longline fisheries are managed under a single limited

access fishery with a maximum of 164 vessel permits; it consists of a deep-set component that targets bigeye tuna and a shallow-set component that targets swordfish. The number of vessels participating in the deep-set longline fishery each year from 2019-2021 varied from 146 to 149. In 2021, 146 of these vessels made about 1,679 deep-set trips and almost 22,074 sets during these trips.

For the reasons above, the proposed action is not expected to have a significant economic impact on a substantial number of small entities, either through a significant loss in landings or expenses incurred. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule does not contain a collection-of-information requirement and thus requires no review under the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 665

Fisheries, Fishing, Hawaii, Longline, seabird mitigation, Pacific Islands, Western Pacific.

Dated: October 11, 2023.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801, *et seq.*

2. Amend § 665.802 by revising paragraph (z), adding paragraph (ll), and revising paragraphs (mm) through (qq) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(z) Fail to fish in accordance with the seabird take mitigation techniques set forth at §§ 665.815(a) when operating a vessel registered for use under a Hawaii longline limited access permit.

* * * * *

(ll) Fail to use weighted branch lines or a bird curtain that meets the specifications of 50 CFR 665.815(a)(1)(i) through(vii) when operating a side-setting vessel that is registered for use under a Hawaii longline limited access permit, when making deep-sets or shallow-

sets north of 23° N. lat., or shallow-sets south of 23° N. lat. in violation of § 665.815(a)(1).

(mm) Fail to use a line shooter with weighted branch lines to set the main longline, and fail to use a tori line system prior to the first hook being set that meets the specifications of 50 CFR 665.815(a)(3)(i)(A) through (E) when operating a stern-setting vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep-sets north of 23° N. lat. in violation of § 665.815(a)(3).

(nn) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access permit north of 23° N. lat., in violation of § 665.815(a)(4).

(oo) Fail to maintain and use blue dye to prepare thawed bait when operating a stern-setting vessel registered for use under a Hawaii longline limited access permit when making shallow-sets, in violation of § 665.815(a)(2)(vi) through (vii).

(pp) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a stern-setting vessel registered for use under a Hawaii

longline limited access permit when making shallow-sets, in violation of § 665.815(a)(2)(i) through (iv).

(qq) Fail to begin the deployment of longline gear at least 1 hour after local sunset or fail to complete the setting process before local sunrise from a stern-setting vessel registered for use under a Hawaii longline limited access permit while shallow-setting, in violation of § 665.815(a)(2)(v).

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3. Amend § 665.815 by revising (a) introductory text; (a)(2) introductory paragraph, paragraphs (a)(2)(v) and (viii); and (a)(3), to read as follows:

§ 665.815 Pelagic longline seabird mitigation measures.

(a) *Seabird mitigation techniques*. When deep-setting or shallow-setting north of 23° N. lat. or shallow-setting south of 23° N. lat., owners and operators of vessels registered for use under a Hawaii longline limited access permit, must either side-set according to paragraph (a)(1) of this section, or fish in accordance with paragraphs (a)(2) through (4), as applicable, of this section.

* * * * *

(2) Alternative to side-setting when shallow-setting. Owners and operators of vessels engaged in shallow-setting that do not side-set must do the following:

* * * * *

(v) Begin the deployment of longline gear at least 1 hour after local sunset and complete the deployment no

later than local sunrise, using only the minimum vessel lights to conform with navigation rules and best safety practices;

* * * * *

(viii) Follow the requirements in paragraphs (a)(4) of this section, as applicable.

(3) Alternative to side-setting when deep-setting. Owners and operators of vessels engaged in deep-setting using a monofilament main longline north of 23° N. lat. that do not side-set must do the following:

(i) Employ a tori line system, prior to the first hook being set, that meets the following specifications:

(A) *Length and material*. The tori line must have an aerial section with a minimum length of 50 m (164 ft) and be made of ultra-high molecular weight polyethylene, or other NMFS-approved material that is light-weight, water resistant, low stretch, and floats in water. The tori line must have a drag section made of a 6 millimeters or larger braided material that is water resistant and floats in water. Monofilament nylon is prohibited for use in the aerial or drag sections of the tori line. The tori line must have a minimum total length of 100 m (328 ft).

(B) *Streamer configuration*. The aerial section of the tori line must have light-weight material (hereafter referred to as (streamers) that are attached to the aerial section at intervals less than 1 m (3.3 ft) apart. Each

streamer must have a length of at least 30 cm (11.8 in) from its attachment point to the tori line so that it hangs and moves freely/flutters in the wind. Where a single streamer is either threaded through or tied to the tori line, each length must measure at least 30 cm (11. in). Streamers are not required for the last 20 m (65.6 ft) of the aerial section to minimize entanglements with buoys and fishing gear.

(C) *Number.* Two tori lines meeting the specifications in paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) of this section must be present on the vessel at the start of every trip.

(D) *Attachment point and material.* The aerial section of the tori line must be attached to the vessel or a fixed structure on the vessel made of rigid material. A weak link must be placed between the tori line and the point of attachment so that the tori line will break away from the point of attachment if gear entanglement creates tension on the tori line. The attachment point must have a minimum height of 5 m (16.4 ft) above the water when the attachment point is located within 2 m (6.6 ft) of the vessel stern. When the attachment point is more than 2 m (6.6 ft) from the stern, the attachment point height must be increased by 0.5 m (1.6 ft) for every 5 m (16.4 ft) distance from the stern.

(E) *Attachment point height exemption.* If the structure used to attach the tori line breaks during a

trip, the operator may use an alternative attachment point at the highest possible point on the vessel that is lower than the height specified in paragraph (a)(3)(i)(D) of this section to continue fishing north of 23° N lat. The exemption is only valid during the trip in which the structure broke.

(ii) Employ a line shooter; and

(iii) Attach a weight of at least 45 g (1.6 oz) to each branch line within 1 m (3.3 ft) of the hook.

(4) Basket-style longline gear requirement. When using basket-style longline gear north of 23° N. lat., owners and operators of vessels that do not side-set must ensure that the main longline is deployed slack to maximize its sink rate.

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